

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4400 of 1999

DISTRICT EDUCATION OFFICER

Versus

RD KANERIA

Appearance:

MR SP HASURKAR for Petitioners

MR RA MISHRA for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA.

Date of Order: 04/11/1999

ORAL ORDER

1. Heard learned counsel for the parties.

2. The petitioners - District Education Officer and Audit Officer, challenge the order made by the Gujarat Secondary Education Tribunal, Ahmedabad dtd. 24th November, 1998, passed in Application NO.8 of 1995 filed by Mr. R.B. Kaneria - respondent NO.1.

3. The facts which led to this litigation are that the respondent NO.1 was appointed as Assistant Teacher on 17/6/68 and was promoted as Head Master with the respondent No.2 on 18/6/73. At that time the Pay Scale recommended by Sarela Commission was in force and the salary of respondent NO. 1 was accordingly fixed under that Pay Scale. For the Head Masters, the Commission has recommended for payment of additional amount of Rs.75/to Rs.100/- p.m., depending upon number of students of the institution and this was in addition to basic pay. The petitioner was receiving that amount from the date of his promotion. In 1976, the recommendations of Desai Commission were accepted by the State of Gujarat w.e.f. 1/1/73 which came to be applicable to the respondent No.1 and accordingly the Pay Scale of the respondent NO.1 was fixed as per Desai Pay Scale as revised pay scale corresponding to the Sarela Pay Scale w.e.f. 1/1/76. For the period between 17/6/68 to 17/6/73 his salary was revised in the pay scale applicable to Assistant Teacher

and with effect from 18/6/73 in the pay scale applicable to Head Master under the Desai Scale. However, this exercise of transition from Sarela Pay Scale to Desai Pay Scale took place by taking into account basic pay only, payable under the respective scales. On this transition, the benefits of Rs. 75/- in addition to basic pay were not given effect to, as the Desai Pay commission did not recommend for payment of additional allowance. However, it appears that on the representations made by the teachers, on 17/9/89 the Government accepted the demand and resolved the case of Heads Masters and Teachers for the purpose of fixing the revised pay scale in Desai Pay Scale from Sarela Pay Scale the additional allowance of Rs.75/- or Rs.100/- as the case may be, payable to Headmasters was decided to be included in the basic pay payable under the Sarela Pay Scale and corresponding advantage to be given in the fixation under the Desai Pay Scale. As a result, the respondent No.1 continued to draw benefit of Rs.75 until his retirement dtd. 31/12/92. While fixing retiral benefits, an objection was raised by the audit department that as the petitioners' pay was already fixed in Desai Pay Scale w.e.f. 1/1/73, the petitioner was given benefit of Desai Pay Scale on promotion and the amount of allowance payable under Sarela Scale, could not be included in addition thereto and directed recovery of Rs.43,396/- against gratuity and other amount payable to the respondent on account of alleged excess payment of Rs.75/- p.m. since 1973. This order of recovery was challenged by the respondent NO.1 before the Gujarat Secondary Educational Tribunal who by its order dtd. 24/11/98 has upheld the contention of the respondent NO.1 and over-ruled the objections made by the audit officer and ordered not to make any recovery on that count. The retiral benefits were directed to be released. the said order of the Tribunal is challenged in this petition.

4. Mr. Hasurkar, learned counsel for the petitioners urged that the Tribunal has erred in not properly construing the Government Resolution dtd. 7/9/89. It only applies in fixing salary under the Sarela Pay Scale. And the respondent No.1 was already fixed in the Desai Pay Scale w.e.f. 1/1/73, and the benefit of Sarela Pay Scale were merged therein, the resolution dtd. 7/9/89 had no application. Mr. R.A. Misra, appearing for the respondent joins issue with Mr. Hasurkar and support the conclusion reached by the Tribunal. He urged that there is no error much less any error apparent on the face of the record.

5. Having carefully considered the contentions and resolution dtd. 7/9/89, I am of the opinion that the petition must fail. The preamble of resolution dtd. 7/9/89, makes it clear that Head Masters/Principals of number of non-Government schools to whom Sarela Pay Scales were made applicable were given the benefits of allowance of Rs.75/- or Rs.100/- p.m., depending upon the number of the students of the institution, in addition to the pay in the pay scale. Para two makes it clear that Desai Pay Scales which were accepted on 1/1/76 were made applicable w.e.f. from 1/1/73. Though by later order dtd.11/6/76, the teachers who were appointed as Head-Master by 31/12/72 that is to say prior to 1/1/73 were allowed to retain benefits to additional allowance under the Sarela Commission, on their revision of pay under Desai Pay Scales w.e.f. 1/1/73, no such orders having been made in respect of the teachers appointed Headmasters/Principals between 1/1/73 to 31/12/75 they were not given benefits of additional allowance while fixing them in the Desai Pay Scale which has caused grievance amongst those teachers. Considering their representation, the Government decided that those teachers also, who were appointed between 1/7/73 to 31/12/75 as Principals and Head Masters, while fixing their pay Scale in Desai Pay Scale, additional allowance paid under the Sarela Pay Scale shall be included in the basic pay, so that they carry the said benefit under the new scale. It is clear from resolution that every Head Master and Principal who has been appointed between 1/1/73 to 31/12/75 was made entitled to the said benefits. The pay in Desai Pay Scale had been fixed prior to resolution of 89. The contention of learned counsel for the petitioners that since the petitioner has already been fixed in Desai Pay Scale w.e.f. 1/1/73, he is not entitled this benefit, is fallacious because the contention does not take into account that the respondent NO. 1 could not have been fixed initially in the Desai Pay Scale from the date of his promotion in 1973 in the first instance because at that time Desai Pay Scale had not come into existence. His fixation in the Desai Pay Scale w.e.f. 1/1/73 is only by way of revision from Sarela Pay Scale to Desai Pay Scale as a result of acceptance of Desai Pay Scale with retrospective effect on 1/1/76. The benefits of Circular dtd. 7/9/89 would unequivocally go to all the persons who were appointed between 1/1/73 to 31/12/75 under the Sarela Pay Scale and consequent upon the acceptance of Desai pay scale, their pay was revised under the Desai Pay Scale. This position cannot be disputed by Mr. Hasurkar. Until Circular dtd. 7/9/89 was brought into effect benefits of Rs.75/- p.m. in addition to the basic pay could not be given to any

one who was appointed Head-Master/Principal between 1/1/73 and 31/12/75 though such benefit was carried over by those appointees to such posts prior to 1/1/73. Obviously, those who were appointed as Head-Master/Principals after 1/1/76 were initially fixed in Desai Pay Scales only on the promotional post. The benefit of additional allowance of Rs.75/- p.m. given under the new pay scale (Desai Pay Scale) by merging the amount with the basic pay scale under the Sarela Pay Scale in 1989 was also ordered with retrospective effect to cover the left out period for extension of such benefit to all those who had been appointed Head Masters or Principals prior to 1/1/76 and had become entitled to the additional allowance in question. It has been noted above and is apparent from the resolution also that while benefit of retaining the additional allowance was extended to Head Masters/Principals appointed upto 31/12/72 (date immediately before the commencement of Desai Pay Scale) in 1976 itself, no provision was made for those teachers who were appointed between the date with effect from which the Desai Pay scale was accepted and the actual date on which the such recommendations was accepted viz. 1/1/73 to 31/12/75. Those teachers were also drawing benefits of additional allowance under the Sarala Pay Scale w.e.f. the date of their respective appointments, as Head Master or Principals when Desai Pays Scales were accepted. This has resulted in anomalous situation. Those who were appointed as Head Master upto 31/12/72 continued to draw benefits of additional pay while continuing in service, the same stood withdrawn for those who were appointed thereafter, but before, acceptance of Desai Pay Scale on 1/1/76 with retrospective effect w.e.f. 1/1/73. The teachers appointed prior to 31/12/72 were also fixed in Desai Pay Scale w.e.f. 1/1/73 If fixation in Desai Pay Scale w.e.f. 1/1/73, furnished a ground for not extending the benefits of additional allowance, there remains no rational basis in classifying the teachers as appointed before 1/1/73 and appointed after 1/1/73 but before actual acceptance of Desai Pay Scale for different treatment in the matter of additional allowance payable under the existing pay scale. The resolution of 1989 removes this apparently hostile discrimination.

This is the effect of conclusion reached by the Tribunal. I am in agreement with the same. This petition is dismissed. There shall no order as to costs.

Sd/-

(R. BALIA, J.)

rafik